



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-1066**

## **Appeal P-9500243**

### **Ministry of Northern Development and Mines**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Ministry of Northern Development and Mines (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information about the marble quarrying activities of a named corporation (the company) in a specific location. The Ministry identified 58 records as being responsive to the request and granted access to 47 records. The Ministry transferred the request and seven records to the Ministry of Natural Resources for response on the basis that that Ministry had a greater interest in the seven records. The Ministry denied access to the remaining four records. The requester appealed the decision to deny access to the four records withheld by the Ministry.

The records at issue in this appeal consist of an application for funding to the Northern Ontario Heritage Fund Corporation (NOHFC) and an application for funding to the Ontario Mineral Incentive Program (OMIP), access to which was withheld under section 17(1) of the Act (third party information). In a supplementary decision, the Ministry raised the application of section 18(1)(c) but withdrew the exemption during mediation.

The remaining two records consist of a letter to the Minister from an individual and a draft letter of response from the Minister to the individual, withheld under section 21(1) of the Act (invasion of privacy).

A Notice of Inquiry was provided to the appellant, the company, the Ministry and the author of the letter (the affected person). Representations were received from the Ministry and the company.

The issues on appeal are third party information and invasion of privacy.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The Ministry has claimed that sections 17(1)(a), (b) and (c) apply to both the NOHFC application and the OMIP application. For a record to qualify for exemption under section 17(1)(a), (b) or (c) the Ministry and/or the company must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms in (a), (b) or (c) of section 17(1) will occur.

### **Part One**

The Ministry and the company submit that the information in the records contain commercial and financial information about the company. I have reviewed the information in the records and I agree that it qualifies as commercial and financial information. Part one of the test has been met.

## **Part Two**

In order for this part of the section 17(1) test to be met, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly. The records are applications for funding made by the company to NOHFC and OMIP. The Ministry states that the records contain sensitive financial and commercial information which includes the nature of the company's business and anticipated products, its market, its employment role, project costs, marketing plans, assets and balance sheets. The Ministry submits that the records were supplied to the Ministry for the purpose of determining the company's qualifications for funding and therefore, they were supplied in confidence. The company reiterates and supports the Ministry's position. After reviewing the records, I am satisfied that the records were supplied to the Ministry implicitly in confidence and part two of the test has been met.

## **Part Three**

In order to meet this part of the test, the company and/or the Ministry must show how disclosure of the information in the records could reasonably be expected to result in the harms described in sections 17(1)(a), (b) or (c) of the Act. The records include information about the company's targeted market for distribution of its products. The company points out that the quarrying business in Ontario is extremely competitive and that disclosure of its financial and commercial information to the appellant could affect its competitive position within the industry (section 17(1)(a)).

In addition, the company states that within the competitive environment of the industry, it is reasonable to expect that its competitors are also trying to obtain permits for the same quarry location and disclosure of the records would result in undue loss to the company and undue gain for its competitors (section 17(1)(c)).

The Ministry supports the company's position as set out above and submits that it was understood by the company and the lending/grant institutions that all information related to the applications and evaluations was to be submitted and held in absolute confidence. The Ministry points out that disclosure of this information could result in similar candid strategic information not being available to the Ministry where it is in the public interest that such information continue to be supplied for the purpose of proper evaluation and allocation of public funds (section 17(1)(b)).

I have carefully reviewed the representations of the parties. I find that disclosure of the information in the records could reasonably be expected to prejudice the competitive position of the company as contemplated by section 17(1)(a). As the third part of the test has been met, I find that the records qualify for exemption under section 17(1).

## **INVASION OF PRIVACY**

The Ministry has claimed section 21(1) of the Act to withhold access to the two letters described above.

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an individual, including any identifying number assigned to that individual and the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the records at issue. I find that the records contain the name and address of the affected person together with other personal information relating to that individual. The records do not contain the personal information of the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. In the circumstances of this case, the only exception which could apply is section 21(1)(f), which permits disclosure if it would not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The Ministry submits that sections 21(2)(e) and (h) are relevant considerations in that disclosure of the personal information in the records would expose the affected person to pecuniary or other harm (section 21(2)(e)) and that the letters should be considered as private and confidential correspondence to and from a named individual (section 21(2)(h)).

The appellant has not submitted representations. In the circumstances of this appeal, the only representations I have been provided with weigh in favour of finding that section 21(1)(f) does not apply. I have not been provided with evidence on any factors favouring disclosure of the personal information in the records. In the absence of such evidence, I find that the disclosure of these records to the appellant would constitute an unjustified invasion of the personal privacy of the affected person and therefore, the exception contained in section 21(1)(f) of the Act does not apply.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ November 29, 1995